

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF CENTRAL)	
CORPORATION FOR A CERTIFICATE TO)	CASE NO. 10035
RESELL TELECOMMUNICATIONS SERVICE)	

O R D E R

On September 25, 1987, Central Corporation ("Central") filed a self-styled application for authority to provide certain telecommunications services¹ within the Commonwealth. The application included a description of the proposed service and various exhibits designed to demonstrate Central's ability to provide the service within Kentucky. A proposed tariff accompanied the filing.

Several motions for intervention were filed and granted. The intervenors in this matter are South Central Bell Telephone Company ("South Central Bell"), AmeriCall Systems of Louisville ("AmeriCall"), VeriCall Systems, Inc. ("VeriCall"), and American Operator Services, Inc. ("AOSI"). South Central Bell is a local exchange telephone company ("LEC"). AmeriCall is a long-distance

¹ Central is one of five companies that have sought authority from the Commission to provide certain long-distance services often referred to as "Alternative Operator Services" or "AOS." The petition of International Telecharge, Inc. was recently denied. Order, Case No. 10002, Application of International Telecharge, Inc., August 24, 1988, petition for reh'g filed, September 13, 1988. The AOS label is misleading, for Central (and its various competitors) often handles traffic, i.e., 0+ calling card calls, that does not involve a request for operator assistance or service.

telephone utility authorized to provide interLATA services within Kentucky, as well as intraLATA service provided via the resale of certain LEC services. VeriCall and AOSI are applicants before the Commission in other dockets and are competitors of Central.

Both Central and South Central Bell submitted written testimony. A hearing was held on February 23, 1988. Oral testimony was presented on behalf of Central by Lester Freeman, President and Chief Executive Office of Central, and James W. Freeman, associate professor at the University of Kentucky College of Business and Economics. James H. Anderson, Assistant Vice President - Rates and Economics, presented testimony for South Central Bell. All parties except AOSI filed briefs. Subsequent to the hearing, Central filed a new proposed tariff. This April 15, 1988 tariff filing has been considered by the Commission in evaluating Central's proposal.

DISCUSSION

Central is incorporated in the state of Georgia. According to Central's application, "Central Corporation offers operator assisted interstate and intrastate resale long distance service."² Central's services are designed for the use of the transient public (end-users)³ through commercial subscribers such as hotels,

² Application, p. 2.

³ Throughout this Order, end-users are those persons actually using, i.e., placing calls from, facilities serviced by Central. Central's end-users are to be distinguished from Central's subscribers or customers. A Central customer generally offers the use of his telephone equipment to the public.

motels, and hospitals. Central does not advertise its services, and does not offer service to residential customers.⁴ The overwhelming majority of the public is probably unaware that Central exists. Central started its business as a private payphone company; however Central's service is no longer offered through privately-owned coin telephones.⁵ Central's service generally requires the alteration or modification of the customer's equipment, so that traffic may be diverted to Central.⁶

In return for letting Central provide its service through a customer's telephone facilities, the subscriber receives a commission equalling 15 percent of the net amount of all calls billed by Central. At the time of the hearing, Central's proposed tariff also included a "transient fee" which was to be assessed on the first 7 minutes of each call. The transient fee was apparently to be remitted, along with the commission, to the Central subscriber. Central's April 15 tariff filing deleted the proposed transient fee.

Central is clearly a reseller. However, Central's method of resale is atypical of the resale industry as it exists today in

⁴ During cross-examination, Lester Freeman was asked if Central serves individuals, e.g., residential subscribers.

Q 70 And is it not possible for individuals to subscribe to Central in a manner that they might subscribe to AT&T or Sprint or MCI?

A No, they wouldn't want to, I wouldn't think. (Transcript p. 55).

⁵ Transcript, p. 9 (L. Freeman).

⁶ See application at p. 2.

Kentucky. Many interexchange carriers ("IXCs") operating in Kentucky resell tariffed interLATA, intrastate services offered by facilities-based carriers such as AT&T. Additionally, several utilities, including AmeriCall, resell intraLATA WATS and Message Telecommunication Service ("MTS") purchased from LECs. Central's proposal involves the use of interstate IXC services for all transmission. Central, while requesting intraLATA authority, is not proposing to order any LEC WATS services for the purpose of resale. The resale of WATS purchased from LECs was approved in Administrative Case No. 261, An Inquiry into the Resale of Wide Area Telecommunications Service. The Commission permits the resale of WATS, purchased from LECs, to complete intraLATA calls. However, facilities-based IXCs may not use their own network facilities to complete intraLATA calls. Only WATS and MTS services purchased from LECs may be used to complete intraLATA calls. Other LEC services are not authorized for resale.⁷ Both South Central Bell and AmeriCall have indicated their concern about Central's request for intraLATA authority. South Central Bell and AmeriCall correctly point out that the only intraLATA competition with the LECs that the Commission permits is the resale of WATS purchased from the LECs.⁸ Mr. Anderson testified for South Central Bell that Central's proposal would diminish

⁷ See, e.g., South Central Bell K.P.S.C. Tariff 2A, A2.2.1.B, which is a general tariff restriction relating to the resale of South Central Bell's services.

⁸ South Central Bell brief at p. 2, AmeriCall brief at p. 7.

the contribution from operator-handled intraLATA calls provided to South Central Bell's intrastate revenue requirements.⁹

Long-distance utilities, whether facilities-based or not, typically order access services from LECs. These access services allow end-users (who are also customers or subscribers) to reach the long-distance carrier they wish to use. Through access charge payments, certain intrastate revenue requirements of the LECs are satisfied. In addition, facilities-based carriers contribute to the Universal Local Access Service ("ULAS") pool, which recovers non-traffic sensitive costs of providing access.¹⁰

Ordinarily, for an IXC to receive 0+, 0-, or 00- originating traffic, the IXC would need to purchase Feature Group D originating access, and program its network switches to accept zero-dialed calls originating from equal access customers who have chosen the IXC as their primary IXC. An IXC would ordinarily not receive a 0- call, which is typically a request for LEC operator assistance.¹¹

Central's network configuration is highly unusual. Through the use of a microprocessor installed at each Central subscriber's facility, Central has avoided the need to purchase access services

⁹ Transcript, pp. 114-117.

¹⁰ Access revenue is generated only through the sale of access services, and through ULAS payments. At the hearing, there was significant discussion of these methods of supporting access revenue requirements. E.g., Transcript, p. 116. (Anderson)

¹¹ An IXC with intraLATA authority might properly receive a 0-call. However, such an IXC might not have the ability to process certain calling card calls.

in Kentucky. The microprocessor "intercepts" certain calls that begin with a dialed "0".¹² When an end-user begins to dial, the dialed digits are stored. In a manner relatively transparent to the calling party, the microprocessor dials an "800" number which connects the subscriber facility with Central's operator center in either Charlotte, North Carolina or Fort Lauderdale, Florida.¹³ After billing information is secured, presumably by a Central operator, the Central facility places an interstate call to the called number.¹⁴ A call on Central's "network" actually consists of two calls, bridged together at Central's facility.¹⁵ This configuration is highly significant. To AT&T, the carrier on the originating "leg" of the call, it appears that an interstate call has occurred between Kentucky and Florida or North Carolina. Accordingly, AT&T pays interstate access charges to a Kentucky LEC and a Florida or North Carolina LEC. No intrastate access revenue accrues in Kentucky. Similarly, no intrastate access charges are paid on the second "leg" of the call, between Central's switch and

¹² Sometimes the dialing sequence may be "8" + "0" or "9" + "0", if the caller is using a phone in a hotel, hospital, or dormitory.

¹³ Central's underlying carrier for the origination of traffic from Kentucky is AT&T. Central uses AT&T's Advanced 800 Service, purchased pursuant to AT&T's FCC Tariff No. 2, to transport to its operator facilities, all calls that originate in Kentucky. Transcript, p. 20 (L. Freeman); Response to Order dated November 13, 1987, p. 1.

¹⁴ A call terminating in the same state as the operator facility would, of course, be an intrastate call.

¹⁵ Transcript, pp. 20, 37-38 (L. Freeman).

Kentucky. This is true whether or not AT&T carries the return segment to Kentucky.

At the hearing, during cross-examination by counsel for the Commission, Lester Freeman acknowledged that calls handled by Central consist of two interstate calls, probably carried by separate IXCs.¹⁶

Central's call completion scenario results in a misallocation of access revenue. Utilities that configure their networks in more typical ways pay intrastate access charges for intrastate traffic. These charges are recovered through the intrastate access tariffs that Central has totally bypassed. For any intrastate call completed by Central, whether intraLATA or interLATA, no access charges are paid by Central, and no intrastate access charges are paid by Central's underlying carrier or carriers.¹⁷ Central argues that since Central's market share is small, the routing of intrastate traffic out of state does not create a jurisdictional shift for the underlying carrier.¹⁸ While the effect on intrastate access revenue caused by Central's network may currently be minimal, we believe that the approval of

¹⁶ Transcript, p. 20 (L. Freeman). Central utilizes MCI services for some call segments that originate from Central's facilities.

¹⁷ In its brief, AmeriCall argues that to permit Central to use interstate services to complete intrastate calls places resellers like AmeriCall at a competitive disadvantage. AmeriCall points out correctly that intrastate access charges paid by authorized interLATA carriers are higher than the interstate access charges paid indirectly by Central through its underlying carriers. AmeriCall Brief at 11.

¹⁸ Central Brief at 18.

a plan that erodes both intrastate access revenue and the contribution provided by LEC-handled intraLATA operator-assisted calls is not likely to benefit Kentucky ratepayers. These considerations must be balanced against the possible benefits provided by Central's proposal.

Since Central's primary relationship is with its customer, and not with end-users, billing is accomplished in one of two ways. End-users may charge Central calls to major credit cards (e.g. Mastercard, Visa, Discover) or they may be billed through the LEC that provides their local service. For example, Central will bill charges to a caller's home telephone number, including charges for customer dialed calling card calls.¹⁹ Central also handles collect calls and person-to-person calls. The practice of billing calls to a caller's telephone number has led to complaints

¹⁹ Lester Freeman testified "we are primarily in the business of providing the user the opportunity to bill the call to a telephone company calling card or make the call collect or to a bank credit card. . ." (Transcript, p. 11.) The majority of calls handled by Central are billed to the end-users local telephone bill. Transcript p. 33 (L. Freeman). Central rejects calling cards that are not line-specific, i.e., do not utilize an actual telephone number.

and confusion among callers attempting to use LEC or AT&T provided calling cards.²⁰

At the hearing, there was considerable discussion related to the use of calling cards, confusion among holders of such cards, and the need for improved education of end-users. Central has offered general allegations that AT&T and the Bell Operating Companies ("BOC") link their calling card services in a manner that encourages the misconception that there is but one telephone company involved in calling card calls. Central points out correctly that a customer using an AT&T calling card may not be aware that a BOC will transport and bill intraLATA calls made with

20 Because LECs and AT&T charge less for direct dialed "0+" calls than for operator-assisted calls, calling cards have become a popular option for transient users. The use of such calling cards may account for a large portion of all 0+ interLATA traffic in Kentucky, given their relative economy. When a caller using a South Central Bell or AT&T calling card places an "0+" call that is intercepted by Central, Central bills its charges to the telephone number associated with the calling card. This "third number billing" of calling card calls has led to some customer confusion among end-users who assume that all "0+" calling card calls are handled at the same rates, by the same carrier. Of course, IXCs other than AT&T issue telephone credit cards. See MCI Telecommunications Corporation K.P.S.C. Tariff No. 1, 3rd Revised Page No. 27, Section C3.03 (credit card); US Sprint K.P.S.C. Tariff No. 1 3rd Revised Page 25 Section 4.1 (FONCARD). In some cases, these IXCs provide their own billing and collection services. Since Central presently serves only the "transient" public, who have no primary relationship with Central, Central does not issue its own credit card. Users of telephone credit cards other than AT&T- or LEC-issued calling cards are unlikely to ever encounter a Central operator, since the use of such calling cards usually involves a 950+ or 1-800+ dialing sequence. However, some carriers, e.g., US Sprint, are capable of receiving originating 0+ interLATA and 00-traffic in equal access areas. At this time, AT&T possesses the vast majority of the market share for 0+ interLATA calls.

the card. The Commission can only note that it is the use of calling card information by Central and its various competitors, not the BOCs, that has prompted public concern over price gouging and customer confusion throughout the past several months. Central's assertion that the BOCs and AT&T mislead the public is ironic in light of Central's dubious practice of intercepting calls with the message "Central Operator, how do you wish to pay for the call?" The use of the word "Central" to identify a small, basically unknown long-distance company seems highly likely to confuse end users as to the source of the service being provided. The term "Central" has historically been linked with the provision - prior to divestiture - of operator services by local exchange companies. The association is strong enough to warrant explanation in dictionaries.²¹ Given this historical linkage, acknowledged at the hearing by Central,²² unwary end-users may never realize that a "Central Operator" is an employee of Central Corporation. Central's efforts to identify itself, through

²¹ For example, the noun "Central" is defined as "a telephone exchange or operator." Websters Ninth New Collegiate Dictionary (1987).

²² Transcript pp. 29-30 (L. Freeman), cross-examination by South Central Bell.

"Q 70 Mr. Freeman, not that I am old enough to remember, but I understand back in days when more calls were handled by live operators, rather than machines, as we do them today, that often the operator would answer "Central Operator," or something to that effect. Is your company's named [sic] derived from that experience?

A. Yes, my personal experience. I am a lot older than you are."

the use of a descriptive tradename, are patently insufficient.²³ Although Central has the ability to transfer or "splash-back" callers to AT&T or the appropriate LEC, only the most wary end-user, perhaps an AT&T employee,²⁴ is likely to request the transfer, given Central's operator handling practices. Central lacks the ability to ensure that its customers provide adequate notice to end-users that Central provides long-distance operator services for the guests of that customer.²⁵

An additional concern relating to telephone calling cards is the fact that Central presently lacks the ability to validate the calling cards issued by any Kentucky LEC. Billing these calling card calls exposes Central to a significant risk of fraud. To the

²³ During cross-examination by the Commission Staff, Lester Freeman was asked how Central would deal with an end-user utilizing a line-specific calling card.

Q 44 So, if I were staying in a hotel and carrying a telephone company issued calling card, touched 8 and then touched zero, and then dialed the number that I wanted to reach, I would get an operator who would say "Central operator?"

A "How do you wish to pay for the call."

Q 45 "How do you wish to pay for the call," and then if I said that I wanted to use, for example, an AT&T card, would that be accepted?

A What number? "What is the number on the card?"

Q 46 There would be a request for the card number?

A Right.

Transcript pp. 44-45.

²⁴ Transcript, p. 62 (L. Freeman)

²⁵ Transcript p. 47 (L. Freeman).

extent that fraudulent calls are billed to calling cards that Central cannot verify, the risk of fraud may be imposed on ratepayers on whose telephone bills the calls appear.²⁶ The Commission is concerned about unverified billing to calling cards not only by Central, but by any AOS company or IXC that engages in the practice. If Central cannot validate calling cards, Central should avoid giving the impression that it accepts such calling cards. Were Central's inability to validate calling cards to become widely known, there could be a precipitous amount of fraudulent calls billed to working telephone numbers. The Commission notes that Central's strategic decision to stop serving payphones may mitigate some concerns about fraudulent billing. Finally, it appears that in some cases, Central's service has the effect of replacing the automated calling card service provided by South Central Bell, other LECs, and AT&T, which have validation, with a more cumbersome, vulnerable service.

Central proposes to offer services at rates that generally mirror the intrastate operator-assisted rates of AT&T, with certain exceptions. For example, while AT&T offers a 50 percent discount for calls made at night (11 p.m. - 8 a.m.), Central proposes to offer only a 35 percent discount. Also, Central's minimum charge for operator handling is \$1.50. This is the charge Central would apply when an LEC or AT&T calling card user places an 0+, direct-dialed call through Central. This charge compares

²⁶ Transcript, pp. 53-54 (L. Freeman) staff cross-examination.

with the 50 cents charged by South Central Bell or AT&T for an intrastate, direct-dialed calling card call.²⁷

Central's current rate proposal differs markedly from its original proposed tariff which contained higher rates. At the hearing, Central's witnesses provided various justifications for the fact that Central proposed to charge higher rates. Central's unusual network configuration and its dependence on LEC billing and collection services make Central's costs of providing service quite high, and necessitate somewhat higher rates. Additionally, Professor Freeman stated that transient persons expect to pay more for all types of goods and services, and are willing to accept higher prices for things purchased while travelling. While "transients" may assume that high prices imposed on them are inevitable, we are reluctant to acquiesce in making that assumption even more pervasive. During the hearing, Lester Freeman expressed his opinion that Central could not survive if compelled to charge AT&T rates.²⁸ If Central would be unable to survive in a 1+ environment due to its higher costs,²⁹ we fail to

²⁷ Central's original tariff filing described a \$1.50 charge for "Customer Dialed Credit Card" calls, that would apply when an end-user has dialed all digits necessary to complete the call, i.e. the desired telephone number and the end-users calling card number. Central's practice of handling "calling card calls" in this manner is likely to mislead calling card users into believing they are using the services of AT&T or the LEC. As discussed within this Order, Central's practice of "branding" its calls may aggravate the problem.

²⁸ Transcript, p. 39.

²⁹ See footnote 4, supra.

see why Central should be permitted to recover its costs through higher rates imposed on unwary, transient end-users who would probably avoid Central if able to make an informed choice. Were Central to conduct its business in a manner that ensured that all end-users using Central were properly informed and fully cognizant of Central's rates, the Commission would not be concerned about the possibility of overreaching and Central's rates would not be at issue. One approach that would absolutely assure the Commission that Central had placed its users on notice would be for Central to issue its own credit card, which would give end-users the opportunity to choose Central. Such a practice would be fundamentally at odds with Central's current business strategy.

Both Professor Freeman and Lester Freeman pointed out that Central subscribers wish to recover their investment in telecommunications equipment and facilities. We agree that owners of hotels and hospitals should be permitted to recover the investment made in providing all forms of utility service, be it telephone service, electricity, water or gas. However, it seems to us that such costs should be recovered responsibly through the charge levied by the hotel or hospital for the use of its facilities, not hidden in the end-users telephone bill.

Utilities operating within Kentucky are required to furnish adequate, efficient, and reasonable service. KRS 278.030(2). In evaluating Central's application, we are mindful of this

requirement. Central's service appears to offer little to the ratepayers of Kentucky. Central's customers may be more concerned with the possibility of high commissions than with the quality of the service offered by Central. Central's growth is certainly not fueled by the demands of end-users, to whom Central is basically unknown. Central's business practices, taken as a whole, strike the Commission as being less than reasonable. Of great concern is the possible confusion generated by the name "Central." Central's unusual use of the services of other carriers seems to result in an inefficient use of the network.³⁰ More importantly, Central is not paying for its access to the local network to complete intrastate calls. On balance, the likely customer confusion that could result from the approval of Central's proposal outweighs the remote possibility that Central's service could prove beneficial.

Any competition in the IXC market approved by this Commission should benefit the users of those services. The Commission will take all necessary steps to ensure that end-users in Kentucky, whether transient or not, may continue to have confidence in the quality and fair pricing of the many long-distance services available in the Commonwealth. Central's claims of benefits and concerns for Kentucky ratepayers are generally unsupported by the record in this proceeding. For these reasons, Central's application must be denied.

³⁰ Every call carried by Central is backhauled from Charlotte or Ft. Lauderdale, over WATS-like services.

UNAUTHORIZED OPERATION

Pursuant to statute,³¹ utilities are required to file tariffs with the Commission. Such tariffs become effective when approved by the Commission. Utilities must adhere to the rates filed with the Commission, and may not provide service prior to receiving approval. Central has no tariff filed and approved. However, during a portion of 1987, Central did complete some Kentucky intrastate calls.³² Central apparently billed Kentucky end-users for such calls and collected the revenue. More than likely, such calls were billed at rates substantially higher than those charged by AT&T or Kentucky LECs. The Commission will not ratify this behavior, which is prohibited by statute.³³ Therefore, Central must refund the revenues illegally collected in Kentucky. Of course, Central has refunded some money already in response to

³¹ KRS 278.160(1) provides, "Under rules prescribed by the commission, each utility shall file with the commission, within such time and in such form as the commission designates, schedules showing all rates and conditions for service established by it and collected or enforced. . ."

³² Lester Freeman acknowledged that among problems experienced by Central was "transporting calls within Kentucky before we were certified." Transcript p. 40. Central could have avoided processing these calls, since Central is able to compare the originating and terminating NPA-NXX combinations. 0- calls may be screened also, after they reach Central's operator computer and the terminating number is ascertained. See Transcript pp. 27, 56 (L. Freeman).

³³ KRS 278.160(2) provides, "No utility shall charge, demand, collect or receive from any person a greater or less compensation for any service rendered or to be rendered than that prescribed in its filed schedules, and no person shall receive any service from any utility for a compensation greater or less than that prescribed in such schedules."

complaints. Some consumers, believing that the rates charged were lawful, may have paid Central. The fact that billing and collection services were performed by LECs may have reinforced such beliefs. Such possibilities are immaterial however. Central's rates were never approved by the Commission and should never have been billed.

The Commission FINDS that:

1. Central's business practices relating to its provision of operator assisted long-distance service are likely to cause customer confusion and dissatisfaction in Kentucky.

2. Central's practice of using interstate services to provide intrastate service results in underpayment and misclassification of access charge revenue paid to LECs within Kentucky.

3. Central's practice of accepting telephone calling cards without the ability to validate the use of such cards is unreasonable.

4. Central lacks the ability to ensure that its customers provide notice to end-users that traffic originating from the customer's telephones may be intercepted by Central.

5. Central's operation in Kentucky has been in violation of the tariffing requirements of KRS 278.160.

6. Central has the technical ability to avoid processing calls within Kentucky.

7. Central lacks the ability to provide adequate, efficient, and reasonable service, as required by KRS 278.030(2).

IT IS THEREFORE ORDERED that:

1. Central's application for authority to provide telecommunication services within Kentucky be and it hereby is denied.

2. Within 30 days from the date of this Order, Central file documentation showing the total amount of charges billed for Kentucky intrastate traffic, and a proposal for the refunding of all charges collected by Central in Kentucky for calls that originated and terminated within Kentucky. Such proposal may account for the fact that certain end-users billed by Central through Kentucky LECs may no longer be customers of such LECs, and may, therefore, be impossible to locate for the purpose of issuing a refund. Such proposal may also account for the fact that certain refunds and adjustments have been made previously.

3. This Order be served on all LECs and IXC's operating within Kentucky, and all applicants currently proposing to offer long-distance services within Kentucky.

Done at Frankfort, Kentucky, this 26th day of September, 1988.

PUBLIC SERVICE COMMISSION

Richard D. Herman, Jr.
Chairman

Robert M. Davis
Vice Chairman

James N. Williams, Jr.
Commissioner

ATTEST:

Executive Director